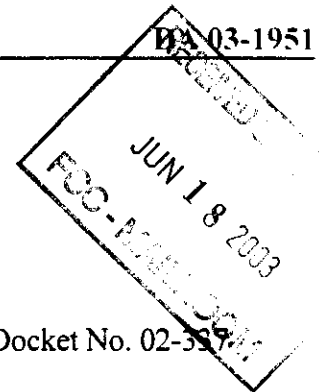


Federal Communications Commission

Before the
Federal Communications Commission
Washington, D.C. 20554

03-1951



In the Matter of

Request of SBC Ameritech Wisconsin for
Limited Modification of a LATA
Boundary in Wisconsin

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WC Docket No. 02-357

MEMORANDUM OPINION AND ORDER

Adopted: June 13, 2003

Released: June 13, 2003

By the Chief, Competition Policy Division:

I. INTRODUCTION

1. On October 21, 2002, SBC Ameritech Wisconsin (SBC), pursuant to section 3(25) of the Communications Act of 1934, as amended (Act),¹ filed a petition² to modify the boundary between two local access and transport areas (LATAs) in Wisconsin so that all 16 lots within a proposed housing development may be unified in a single LATA. Specifically, SBC seeks to modify the LATA boundary between the Town of Richmond exchange and the Town of Whitewater exchange so that seven lots in the Town of Richmond exchange would be transferred to the Town of Whitewater exchange. SBC seeks to provide non-optional, message-rated service, as required by Wisconsin law.³ For the reasons stated below, we grant SBC's petition.

II. BACKGROUND

2. Although requests for LATA boundary modification are generally initiated by local subscribers, the housing development at issue in this petition is in the planning stage and thus has no current residents. Therefore, SBC has filed on the behalf of the development's future residents.⁴ SBC asserts in the petition that its current network infrastructure allows for the new development to

¹ See Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, codified at 47 U.S.C. § 153(25) (B). 47 U.S.C. § 153(25).

² Request of SBC Ameritech Wisconsin for Limited Modification of Certain LATA Boundaries in Wisconsin and Request for Expedited Treatment, filed Oct. 21, 2002 (SBC Petition). On November 1, 2002, the Commission sought comment on SBC's petition. See *Comment Sought on Wisconsin Bell Request for Limited Modification of LATA Boundary to Provide Expanded Local Calling Service Between Certain Exchanges in Wisconsin*, Public Notice, 17 FCC Rcd 21668 (2002). No comments were received regarding SBC's petition.

³ SBC Petition at 3.

⁴ *Id.* at 2.

be more efficiently served by facilities from the Whitewater exchange than from the Richmond exchange.⁵

3. Under section 3(25)(B) of the Act,⁶ requests for LATA boundary modifications fall within the Federal Communications Commission's (Commission's) exclusive jurisdiction.⁷ Applying a two-part test, the Commission will grant a request for a physical LATA modification where: (1) the applicant proves that the requested LATA modification would provide a significant public benefit (typically by showing that there is a significant community of interest among the affected exchanges); and (2) the public benefit outweighs any negative effect that granting the petition would have on a Bell Operating Company's incentives to fulfill its section 271 obligations.⁸

4. The SBC Petition proposes to establish measured-rate, non-optional service, and is accompanied by a statement from the Public Service Commission of Wisconsin (Wisconsin Commission) supporting the request on the basis that a sufficient community of interest exists to warrant such service.⁹ The SBC Petition also includes SBC's own community of interest statement, a statement of the location of the affected exchanges, and an estimate of the number of future access lines involved.¹⁰ Because the LATA modification is sought for future residents of a new housing development, no polls were conducted and no usage data were available.

III. DISCUSSION

5. We conclude that SBC's petition satisfies the Commission's two-part test. Applying the first prong of the two-part test, we find that SBC has shown that a public benefit would result from the LATA boundary modification. The Commission has consistently concluded that there is a strong public interest in allowing residents of a community to call each other without having to dial extra digits or incur toll charges.¹¹ Absent our grant of this relief, some residents of this housing development would be required to dial extra digits and incur toll charges for dialing

⁵ *Id.*

⁶ 47 U.S.C. § 153(25).

⁷ See *Application for Review and Petition for Reconsideration or Clarification of Declaratory Ruling Regarding U S WEST Petitions to Consolidate LATAs in Minnesota and Arizona*, Memorandum Opinion and Order, 14 FCC Rcd 14392, 14399 (1999).

⁸ See *Application for Review of Petition for Modification of LATA Boundary*, Order on Review, 17 FCC Rcd 16952, 16958 (2002) (*Erving LATA Order*). See also *Petitions for Limited Modification of LATA Boundaries to Provide Expanded Local Calling Service (ELCS) at Various Locations*, Memorandum Opinion and Order, 12 FCC Rcd 10646, 10649-50 (1997) (*1997 LATA Order*). In this order, the Commission also delegated authority to the Common Carrier Bureau (now the Wireline Competition Bureau) to act on petitions to modify LATA boundaries. *Id.*, 12 FCC Rcd at 10657-58.

⁹ SBC Petition at 2.

¹⁰ *Id.*

¹¹ See *Erving LATA Order*, 17 FCC Rcd at 16953; see also *1997 LATA Order*, 12 FCC Rcd at 10650.

within a location the state has determined to be a local calling area.¹² Further, the Wisconsin Commission has determined that a sufficient community of interest exists among lots in the new development to justify their being in the same local calling area and LATA.¹³ We believe that this determination is a persuasive indicator that a sufficient community of interest exists among the lots in the new development to warrant a LATA boundary modification.¹⁴ Additionally, we note that we received no objections to the grant of SBC's petition. Accordingly, we conclude that SBC has satisfied the first prong of our two-part test.

6. Applying the second prong of the two-part test, we find that granting the SBC Petition would have a minimal effect upon SBC's incentive to fulfill its section 271 obligations because modification of the LATA boundary would affect only a small number of access lines.¹⁵ As a result, we believe that granting SBC's petition serves the public interest by permitting a minor LATA modification where necessary to meet the needs of local subscribers while maintaining SBC's incentives to fulfill its section 271 obligations. Accordingly, we approve the SBC Petition for limited LATA modification.¹⁶

¹² SBC Petition at Exh.B.

¹³ *Id.*

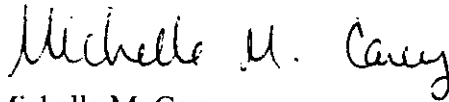
¹⁴ Although the Commission has previously stated a preference for flat-rated service as an indicator of a community of interest, the Commission has granted LATA boundary modifications that include measured or message rated expanded local calling service (ELCS) where, as in the instant case, the types of services offered after the proposed modification were identical to those offered prior to the application. See *Bell-Atlantic-Virginia, Inc. Petitions for Limited Modification of LATA Boundaries to Provide Expanded Local Calling Service (ELCS) at Various Locations*, Memorandum and Order, 13 FCC Rcd 11042 (Com. Car. Bur. 1998) (*April 1998 LATA Order*) (granting ELCS petition where proposed message-rated service was the same as that existing prior to the application). SBC's petition proposes to provide customers with the same message-rated service that existed prior to the physical LATA boundary modification and is the only type of service authorized by Wisconsin law. See SBC Petition at 2.

¹⁵ According to SBC, seven lots will be affected by the proposed modification. Even if each lot requires two access lines, the resulting total number of access lines would fall well within Commission precedent. See SBC Petition at 3; see also *April 1998 LATA Order*, *supra* n. 12 (granting an ELCS petition affecting over 30,000 access lines).

IV. ORDERING CLAUSE

7. Accordingly, IT IS ORDERED, pursuant to sections 3(25) and 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 153(25), 154(i), and authority delegated by sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, that the request of SBC Ameritech Wisconsin for LATA modification at a specific location, identified in WC Docket No.02-337, IS APPROVED.

FEDERAL COMMUNICATIONS COMMISSION



Michelle M. Carey
Chief, Competition Policy Division
Wireline Competition Division